

June 2, 2014

Planning Commissioner Karin Hold
2720 Wakefield Dr
Belmont, CA 94002

Re: Your Request for Advice
Our File No. A-14-100

Dear Ms. Hold:

This letter responds to your request for advice regarding your duties as a Belmont City Planning Commissioner under the conflict of interest provisions of the Political Reform Act (the “Act”).¹ This letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. May you file an appeal of your neighbor’s proposed amendment to the Detailed Development Plan for your neighborhood?
2. How much speaking time will you have as an appellant?
3. May you submit written argument and evidence in support of your position?

CONCLUSIONS

1. You may file an appeal of your neighbor’s proposed amendment to the Detailed Development Plan as a private citizen and may appear to represent your own personal interests.
2. Under the exception, you may appear in the same manner as the public could appear to represent your personal interests. For example, if the City’s appeal rules generally allow appellants ten minutes to orally present their position, you would also be able to present for ten minutes. If the City’s hearing procedures permit appellants to submit written comments and

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

documents concerning the appeal, you may do that as well. Exactly what City procedure applies is a question better presented to your city attorney.

FACTS

You reside in a Planned Development and own your home. Your next-door neighbor applied for an amendment to the Detailed Development Plan for a proposed project related to his residence. An amendment to the Detailed Development Plan is necessary for this project under the City's Zoning Code. Under certain circumstances, the zoning code gives the option for an administrative amendment, or if not administratively, through a public hearing of the Planning Commission.

The City's Community Development Director issued a notice of intent to approve administratively this project. The City's regulations allow any property owner within 300 feet of the project property to file a request for a public hearing before the Planning Commission within ten days of the notice of intent to approve the permit. Since you are next door, you wish to appeal the decision of the Community Development Director by requesting a public hearing under this provision.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision.

Your letter assumes you have a conflict of interest by virtue of your real property adjacent to the proposed project site. Thus, we do not need to analyze all the steps of the standard analysis. Rather you ask about the exception in Regulation 18702.4 which would allow you to represent your own interests before your agency.

Regulation 18702.4 provides a list of exceptions to the general rules. You asked specifically about Regulation 18702.4 which provides at subdivision (a)(1) that making or participating in making a governmental decision shall not include:

“Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official's personal interests as defined in Title 2, California Code of Regulations, section 18702.4(b)(1);”

Moreover, Regulation 18702.4(b)(3) provides:

“(b) Notwithstanding Title 2, California Code of Regulations, section 18702.3(a), an official is not attempting to use his or her official position to

influence a governmental decision of an agency covered by that subsection if the official:

“(1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official’s “personal interests” include, but are not limited to:

“(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

“(B) A business entity wholly owned by the official or members of his or her immediate family.

“(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.”

We have consistently advised that this exception is very narrow and is not intended to apply to every decision in which an official has a conflict of interest, but only those decisions where the official’s personal economic interests will be affected and no one else but the official can represent his or her concerns relative to those interests. Consequently, the exception would not permit an official to represent anyone else’s interest.

In addition, we have cautioned that comments should be strictly limited to the official’s personal interests, and the official should make clear that he or she is not speaking in the interest of any other person or group, and that he or she is not acting in an official capacity. (See *Simonian* Advice Letter, No. A-09-174 and *Adams* Advice Letter, No. I-06-129.)

Finally, exactly what city rules apply is a question better suited for the city attorney. To the extent that certain rules apply to a public individual similarly situated to you (appellants), this should be the same set of rules that applies to you.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel,
Legal Division

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